

No. 43874-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

BATTLE GROUND PLAZA, LLC, Appellant,

v.

DEAN MALDONADO and JANE DOE MALDONADO, husband and wife, and
their marital community; MILLS END, LLC; MILLS END CENTER, LLC;
DRKBG, LLC; DOUGLAS RAY; EUGENE ANDERSON and WILLIAM
MACRAE-SMITH, Co-Personal Representatives of the Estate of IRWIN
JESSEN,

Respondents.

BRIEF OF RESPONDENTS DEAN MALDONADO and JANE
DOE MALDONADO, husband and wife, and their marital
community; MILLS END, LLC; MILLS END CENTER, LLC;
DRKBG, LLC

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DIVISION II
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STATE OF WASHINGTON
DEPUTY

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pm 4/15/13

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TABLE OF AUTHORITIES

Respondents Dean Maldonado and Jane Doe Maldonado, husband and wife, and their marital community; Mills End, LLC; Mills End Center, LLC; and DRKBG, LLC (hereinafter collectively referred to as “Maldonado”) hereby incorporate by reference all authorities cited in the Brief of Respondents Douglas Ray, Eugene Anderson and William Macrae-Smith, Co-Personal Representatives of the Estate of Irwin P. Jessen (hereinafter collectively referred to as “Sellers”).

<i>RAP 10.1(g)</i>	1
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I. INTRODUCTION

The facts and legal arguments regarding the issues of whether Battle Ground Plaza's (BGP) claims were extinguished by the November 1, 2005 sale order; whether BGP's claims are barred by res judicata under federal and state law; whether the Sellers of the property at issue complied with the terms of the right of first refusal; and whether the trial court properly dismissed BGP's seniority claim are virtually identical between Respondents Maldonado and Sellers and are set forth in the Response Brief of Respondents Douglas Ray, Eugene Anderson and William Macrae-Smith, Co-Personal Representatives of the Estate of Irwin P. Jessen (hereinafter referred to as the "Sellers' Brief").

RAP 10.1(g) provides that:

[I]n a case with more than one party to a side, a party may
(1) join with one or more other parties in a single brief, or
(2) file a separate brief and adopt by reference any part of the brief of another.

The Sellers' Brief sets forth relevant facts, arguments and legal authorities demonstrating why the trial court correctly granted Sellers' Motion for Summary Judgment arguing that BGP's claims were barred by the Bankruptcy Court's sale order and correctly denied BGP's Motion for Summary Judgment seeking a determination that Maldonado's rights

under the Reciprocal Easement Agreement were junior to BGP's interest in the shopping center.

Pursuant to RAP 10.1(g), and in the interest of judicial economy and brevity, Maldonado hereby joins in the "Sellers' Brief" to the extent that it addresses the issues of whether Battle Ground Plaza's (BGP) claims were extinguished by the November 1, 2005 sale order; whether BGP's claims are barred by res judicata under federal and state law; whether the Sellers of the property at issue complied with the terms of the right of first refusal; and whether the trial court properly dismissed BGP's seniority claim

Maldonado is not a party to the issues regarding the award of attorney fees to Sellers.

II. ASSIGNMENTS OF ERROR

Maldonado adopts by reference the *Assignments of Error* as stated in the Sellers' Brief.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Maldonado adopts by reference Numbers 1 through 5 of the Issues Pertaining to Assignments of Error stated in the Sellers' Brief.

IV. STATEMENT OF THE CASE

Maldonado adopts by reference the Statement of the Case stated in the Sellers' Brief to the extent that the statement addresses the issues of

whether Battle Ground Plaza's (BGP) claims were extinguished by the November 1, 2005 sale order; whether BGP's claims are barred by res judicata under federal and/or state law; whether the Sellers of the property at issue complied with the terms of the right of first refusal; and whether the trial court properly dismissed BGP's seniority claim. Maldonado also adopts by reference the procedural background as recited in Sellers' Brief.

V. ARGUMENT

Maldonado adopts by reference the following arguments and sub arguments in Sellers' Brief:

- A. **BGP's claims were extinguished by the November 1, 2005, sale order.**
- B. **BGP's claims are barred by res judicata**
 - 1. Federal law applies to determine whether BGP's claims are barred by res judicata.
 - 2. BGP's claims are barred by res judicata under state law as well.
 - 3. Sellers did not engage in fraud or deception that would preclude application of res judicata.
- C. **Sellers complied with the terms of the right of first refusal.**
- D. **The trial court properly dismissed BGP's seniority claim.**
 - 1. BGP's seniority claim is not ripe.
 - 2. BGP is not entitled to seniority.

VI. CONCLUSION

For the reasons set forth above, Maldonado respectfully requests that the trial court's judgment be AFFIRMED

DATED: April 15, 2013.

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DECLARATION OF SERVICE

On the 15th day of April, 2013, I caused a true and correct copy of the following document: Brief of Respondents Dean Maldonado and Jane Doe Maldonado, husband and wife, and their marital community; Mills End, LLC; Mills End Center, LLC; DRKGB LLC in Court of Appeals Cause No. 43874-7-II, to be served via First Class Mail to the following:

Ben Shafton
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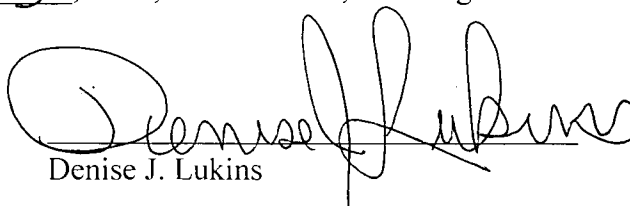
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DEPUTY

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: April 15, 2013, at Vancouver, Washington.


Denise J. Lukins